IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1345 OF 1997

Sachiv, Uchha & Tantrashikshan,
M.S., Mumbai. ... ... Petitioner.

Versus

Baban Shivaji Chougule & others..... Respondents.

Mr. Deepak Patil, AGP for the Petitioner.
Mr. N.V.Bandiwadekar for Respondent Nos.1 to 62 and 64 to 89.
Mr. R.G.Ketkar for Respondent No.91.

-: ALONG WITH :-

WRIT PETITION NO. 1470 OF 1997

Baban Shivaji Chougule & others..... Petitioners.

Versus

Kulsachiv,Shivaji University & Ors... Respondents.

Mr. N.V.Bandiwadekar for the Petitioners.
Mr. R.G.Ketkar for Respondent No.1.
Mr. Deepak Patil, AGP for Respondent No.2.

CORAM : SMT.NISHITA MHATRE, J.

DATED : 25TH JANUARY, 2007.

P.C.:

These two petitions challenge the order of the Industrial Court, Maharashtra at Kolhapur in the Complaint (ULP) No. 202 of 1995. The Industrial

Court has granted interim relief to the complainant against which the State Government has filed the Writ Petition No. 1345 of 1997. The complainants in the two complaints have filed Writ Petition No. 1470 of 1997 seeking certain reliefs which were denied by the Industrial Court. For the sake of convenience, the petitioners in Writ Petition No. 1470 of 1997 will be referred to as the workmen and the petitioner in Writ Petition No. 1345 of 1997 will be referred to as the State Government.

2. The workmen were employed in various posts in the Class II, III and IV cadre with the Shivaji University for the several years. However, none of them were made permanent and were required to work on a temporary basis on daily wages. In 1995 the workmen filed Complaint (ULP) Nos. 181 of 1995 and 202 of 1995 under Items 5, 6 and 9 of Schedule IV of the M.R.T.U. & P.U.L.P. Act. They claimed that they have completed 240 days in service and were, therefore, entitled to be made permanent in service. They also claimed the benefits of permanency. The State has not opposed the claim although they were party to the complaint. The University filed written statement contending that unless sanction is accorded to the post, it was not possible for the University to

grant permanency to the workmen concerned.

3. By a judgment and order dated 16th July, 1996, the Industrial Court has held that no unfair labour practice has been committed by the respondents in complaints. However, because of the duration of service of each worker, it passed the following operative order :

(i) Complaints are partly allowed.

(ii) Respondent University is directed to prepare data regarding seniority and eligibility of each complainant for absorption in Class III or Class IV posts in regular establishment, within one month of this order. While preparing abovesaid data, it shall also look into necessity regarding relaxation of age limit in given cases and include such statement in the data. Within one month thereof, the respondent University shall submit proposal to State of Maharashtra for absorption of complainants in regular cadre, according to seniority and eligibility, maintaining rules regarding roster. In the given case, it shall further make suitable recommendation regarding

relaxation of age limit.

(iii) The State of Maharashtra, represented by respondent No.2 is directed to accord sanction to absorption as recommended by the respondent no.1 University within 2 months of receipt of proposal.

(iv) After absorbing the complainants on regular cadre, the respondents are directed to grant benefits of status and privileges of permanency to complainants with effect from the date of filing of respective complaints.

(v) Complaints stand dismissed in respect of remaining reliefs prayed for.

(vi) No order as to costs.

4. Both the present petitions challenge this order. After the petitions were admitted, an affidavit has been filed by one of the workmen on behalf of all the others in Writ Petition No. 1345 of 1997. Paragraphs 2, 3 and 4 of this affidavit disclose that the University and the State Government has in fact implemented the order of the Industrial Court. Each

of the workmen has been issued an appointment order by the University, individually, pursuant to the sanction received by the University from the State Government. Each workman has been confirmed in his post. Therefore, nothing survives in Writ Petition No. 1345 of 1997 filed by the State Government.

5. As regards the writ petition filed by the workmen, the contention raised by them is that they should have been accorded the status and benefits of permanent workers from the date each of them completed 240 days in service. Reliance is placed on several judgments to submit that once a workman completes 240 days in service, he is entitled to be made permanent whether or not there is a sanctioned post. The Supreme Court has considered this issue in the case of **Secretary, State of Karnataka and others v/s Umadevi and others,** 2006 SCC (L&S) pg. 753, and has held that the backdoor entry of an employee into service should not be encouraged. It has been further held that where the entry into the employment itself is illegal, there is no question of regularisation of such post merely because of the length of service or the continuous period of service by the workman. The Supreme Court has observed as follows in the aforesaid judgement:

"36. While directing that appointments, temporary or casual, be regularised or made permanent, courts are swayed by the fact that the concerned person has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain -- not at arms length -- since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who was temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the

exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he

> was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution of India."

6. In the present case, the State and the University have already implemented the order of the Industrial Court. Therefore, the question of setting the clock back and disallowing the regularisation which has already been effected does not arise. However, the workmen cannot, as a matter of right, seek regularisation and permanency from the date on which they completed 240 days as there is no material on record to indicate that the University and the State had followed the proper procedure initially, while appointing them in service.

7. In the circumstances, both the writ petitions are dismissed. Rule discharged.

8. No costs.

Sd/-

(SMT.NISHITA MHATRE, J.)